INTERIOR BOARD OF INDIAN APPEALS

Estate of George Byron Nelson, Sr.

53 IBIA 7 (01/10/2011)

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF GEORGE BYRON NELSON, SR.	)	Order Docketing and Dismissing Appeal, and Referring Inventory Dispute to Regional Director for a Decision
	)	Docket No. IBIA 11-037
	)	January 10, 2011

Mildred Doris Nelson and Ronald W. Nelson (Appellants) appealed to the Board of Indian Appeals (Board), from a November 9, 2010, Order Reopening Case to State Correct Acreage (Reopening Order), issued by Administrative Law Judge (ALJ) Thomas F. Gordon in the estate of George Byron Nelson, Sr. (Decedent), deceased Hoopa/Hupa Indian, Probate No. P000065317IP. Mildred is Decedent's surviving spouse and sole beneficiary to Decedent's Indian trust estate, through a will. Ronald is a son of Decedent and Mildred.[1] The Reopening Order granted a request by the Pacific Regional Director (Regional Director), Bureau of Indian Affairs (BIA), to reopen Decedent's estate to conform the probate decision and estate inventory of Decedent's trust property to BIA's title records and, specifically, to remove 3.77 acres of Hoopa Allotment 250-A from the estate inventory. The 3.77-acre portion of the allotment was the subject of a conveyance by Decedent during his lifetime to another son, George Byron Nelson, Jr. (Byron).

We dismiss this appeal because it challenges BIA's inventory of Decedent's estate and the probate regulations require that inventory disputes arising during probate must be referred to BIA in the first instance for a decision. Therefore, we refer the dispute to the Regional Director for a decision. Regardless of the outcome of the inventory challenge, we also instruct BIA to address and to resolve an apparent discrepancy in BIA's records, which is reflected in the Reopening Order, concerning the amount of acreage owned by Decedent in Allotment 250-A at the time of his death.

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[1] Although both Mildred and Ronald signed separate notices of appeal, Ronald transmitted both to the Board, and it appears that he intends only to support Mildred's interest as sole beneficiary of Decedent's estate because he asserts no separate interest of his own. Therefore, the Board docketed this case as a single, joint appeal.

Background

Decedent died on December 3, 2006, and devised all of his interests in his trust estate to Mildred. *See* Decision, *Estate of George Byron Nelson Sr.*, Probate No. P00006531 7IP (June 30, 2009). The inventory of Decedent's estate that was attached to the Decision apparently included Hoopa Allotment 250-A and described it as including a total of 8.64 acres.[2]

In a letter dated March 10, 2010, the Regional Director notified the ALJ that Allotment 250-A should be removed because it belonged to Byron, pursuant to a deed approved by BIA. After reviewing the request, the ALJ's staff notified the Regional Director that it appeared that the deed executed by Decedent conveyed only a portion of his interest in Hoopa Allotment 250-A to Byron, totaling 3.77 acres. The Regional Director then submitted a second request to correct the inventory of Decedent's estate, along with an updated estate inventory, which showed that Decedent owned 4.96 acres in Hoopa Allotment 250-A.[3] A survey that is recorded with the 3.77-acre deed from Decedent to Byron also shows the acreage remaining in Decedent's ownership after the conveyance as 4.96 acres. On September 29, 2010, the ALJ issued an order to show cause why the estate inventory should not be modified and the acreage restated as 4.96 acres instead of 8.64 acres. After receiving no objections to the order to show cause, the ALJ reopened and modified the Decision to state the acreage for Hoopa Allotment 250-A in Decedent's estate as 4.96 acres.

Appellants now seek to appeal the ALJ's Reopening Order and to challenge the removal from Decedent's estate of the 3.77-acre conveyance. Mildred contends that Decedent intended to give "only the hillside acreage behind [their] house" to Byron, and that Decedent was "very ill and not able to understand that he was signing away 3.77 acres." Mildred's Notice of Appeal. Mildred requests a review of the signature on the deed and the paperwork to determine if it was completed appropriately. She does not believe that it was. Ronald contends that Decedent, because of his illness, was "not of his right

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[2] The Board finds it unnecessary to order the probate record in order to decide this appeal, but the Board did obtain from the ALJ's office copies of the Title Status Report (TSR) that apparently was attached to the Decision; the current TSR for Decedent's interests in Allotment 250-A; correspondence from the Regional Director to the ALJ requesting reopening to modify the estate inventory for the Decision; and the deed from Decedent conveying 3.77 acres to Byron, which was approved by the Regional Director on April 21, 2006.

[3] The updated inventory report is dated July 26, 2010.

mind to sign over any acreage," and Ronald asks that the conveyance be reviewed for its legality. Ronald's Notice of Appeal. Accordingly, Appellants contend that the acreage Decedent owned in Hoopa Allotment 250-A should not have been modified, although they did not raise their objection to the ALJ.[4]

Discussion

The substance of this appeal is a dispute over BIA's inventory of Decedent's estate, specifically a conveyance by Decedent of 3.77 acres of Hoopa Allotment 250-A to Byron. Under the Department of the Interior's probate regulations, inventory disputes that arise during a probate proceeding must be referred to BIA for a decision. *See* 43 C.F.R. § 30.128; *see also Estate of William Earl Moore, Jr.,* 51 IBIA 98, 98-99 (2010); *Estate of Frances Marie Ortega*, 50 IBIA 322, 325-26 (2009).[5] Accordingly, we refer the inventory dispute, and Appellants' challenge to Decedent's conveyance of 3.77 acres to Byron, to the Regional Director. BIA shall, unless Appellants withdraw their challenge based on additional information from or discussions with BIA regarding the conveyance, issue a decision on the merits of the inventory dispute.[6] BIA's decision(s) will be subject to the separate administrative appeal rights and procedures provided in 25 C.F.R. part 2, culminating in a right of appeal to the Board following a decision by the Regional Director.[7]

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[4] Ronald claims that neither he nor his mother were aware of the gift deed or the modification to Decedent's estate inventory until they received the Reopening Order. The ALJ's show cause order and the Regional Director's second request for reopening both indicate that they were sent to both Appellants at their respective addresses of record.

[5] The regulations specify that "[w]hen an error in the estate inventory is alleged, the OHA deciding official will refer the matter to BIA for resolution . . . ." 43 C.F.R. § 30.128 (2009). As we explained in *Estate of James Jones, Sr.*, the term "OHA deciding official" includes the Board, which is part of OHA. 51 IBIA 132, 135 (2010) (citing 43 C.F.R. § 4.1(b)(2)).

[6] The Board expresses no view on the merits of Appellants' challenge to the 3.77-acre conveyance, nor on Appellants' standing to challenge the conveyance, but the Board encourages the parties to attempt to resolve the dispute informally, if possible.

[7] In referring the dispute to the Regional Director, we leave it for the Regional Director to determine whether the decision should be made, in the first instance, by the Northern California Agency Superintendent (with appeal rights to the Regional Director), or by the Regional Director (with appeal rights to the Board).

As provided in 43 C.F.R. § 30.128(b)(2)(ii), the probate decision is subject to administrative modification if the inventory dispute is resolved in a final decision in a manner that further changes the inventory accepted in the Reopening Order.

In referring the inventory dispute to BIA, we note that the documents that are part of the Board's record for deciding this appeal contain a discrepancy in stating the acreage owned by Decedent in Allotment 250-A that was not subject to the 3.77-acre conveyance. The pre-conveyance TSR states the acreage owned by Decedent in Allotment 250-A as 8.64 acres. The current TSR, which excludes the 3.77-acre conveyance, states the acreage as 4.96 acres, which is the figure stated in the ALJ's Reopening Order and which is also reflected on the survey recorded with the conveyance. But subtracting 3.77 acres from 8.64 acres yields 4.87 acres — not 4.96 acres. We decline to vacate the Reopening Order based on this apparent discrepancy because Appellants failed to object to the ALJ's show cause order, the 4.96 acre figure included in the Reopening Order is supported by the current TSR and survey and thus we cannot determine whether the Reopening Order is erroneous. Moreover, any issue regarding this discrepancy may be addressed by BIA in deciding the inventory dispute. But whether or not BIA rejects or sustains Appellants' challenge to the 3.77-acre conveyance, BIA must clarify the amount of acreage owned by Decedent in Allotment 250-A at the time of death. If the figure is other than 4.96 acres, BIA shall seek a further administrative modification from the ALJ to correct the stated acreage.

Conclusion

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board dockets and dismisses this appeal and refers the inventory dispute to the Regional Director for a decision.

I concur:

// original signed	// original signed
Steven K. Linscheid	Debora G. Luther
Chief Administrative Judge	Administrative Judge